

**Letter of Findings: 04-20190837P  
Penalty  
For Tax Year 2018**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Business provided insufficient documentation to support its penalty abatement request.

**ISSUE**

**I. Tax Administration - Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the penalty.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. Taxpayer was assessed a ten percent penalty because it failed to timely file its sales and use tax return for the 2018 tax year. Taxpayer requested that the Indiana Department of Revenue ("Department") abate the penalty without a hearing. This Letter of Findings ensues. Additional facts will be provided as necessary.

**I. Tax Administration - Penalty.**

**DISCUSSION**

The Department assessed a ten percent penalty for the tax period in question. Taxpayer requested that the Department abate the penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, Taxpayer requested that the Department abate the penalty on the ground that it was not Taxpayer's "intention to become so delinquent on sales tax filings." Taxpayer explained that its former employee "who was responsible for Sales Tax who left [] in January 2009." Upon discovering its failure in March 2019, Taxpayer filed the return and remitted the sales tax in late April 2019. Taxpayer also asserted that it had "taken steps to ensure nothing like this ever happens again," but it did not provide any additional documents to support its request.

After a review of the Department's records, however, the Department is not able to agree. Specifically, in this instance, Taxpayer was assessed a penalty due to its failure to timely file the return and remit the sales tax, a trust tax. The Department's records further show that Taxpayer has additional seven (7) outstanding assessments concerning its withholding tax, also a trust tax. The Department informed Taxpayer and Taxpayer was granted additional time to address those outstanding withholding tax assessments. Taxpayer failed to do so before the agreed due date.

In short, given the totality of the circumstances, the Department must decline Taxpayer's request.

### **FINDING**

Taxpayer's protest of the imposition of penalty is respectfully denied.

July 30, 2019

*Posted: 10/30/2019 by Legislative Services Agency*  
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